IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.33 OF 2000

Shantabai Shivaji Kale
Wadibunder, But, Opp.Petrol Pump,
Chamar Godi, Mumbai .. Appellant.

Versus

1.Jaspalsingh Kevalsingh Manhas
Block No.1, New Captain Bldg.,
King Edward Road, Sewree,
Mumbai 400 015. ..
And/or
M/s.Nagpur Goods Transport Corp.
Eastern Chambers, Pune Street,
Dana Bunder, Dongri,
Mumbai 400 009. ..

2.New India Ass. Co. Ltd.
87, M.G.Road, Mumbai 400 023. .. Respondents.

Mr.M.B.Kotak for the appellant.

Mr.S.R.Singh for respondent no.2.

CORAM : S.B.MHASE &
D.B.BHOSALE, JJ.

DATE : MARCH 2, 2005.

ORAL JUDGMENT (PER D.B.BHOSALE, J.)

1. This letters patent appeal is directed against the order dated 26.10.1999 passed by the learned Single Judge in First Appeal No.886 of 1999 by which the appeal was dismissed in limine. The order passed by the learned Single Judge reads thus:

"No cause for enhanced compensation as the appellant has not produced any documentary evidence".

2. The first appeal was filed by the appellant-claimant (for short "claimant") against the judgment and award dated 10.2.1999 passed by the Member, Motor Accident Claims Tribunal, Mumbai in Application No.541 of 1982 by which the respondents were held jointly and severally liable to pay a sum of Rs.3,000/- with interest thereon at the rate of 10% per annum from February 1995 till realisation of the amount.

3. Briefly stated the facts, sans unnecessary details, are as follows: On 9.11.1991 the claimant was cleaning utensils outside the house when a lorry bearing No.MTS-1757 hit her at lumber region. When the accident occurred she was pregnant and was running seventh month pregnancy. The complaint was lodged by the claimant, in pursuance of which the offence was registered by Dongri police station, Mumbai bearing C.R.No.652 of 1981 under sections 279 and 338 of the Indian Penal Code. Initially, the claim was filed against the United India Fire

and General Insurance Company Ltd. Subsequently, it transpired that the vehicle was registered with New India Assurance Company Ltd. and hence they were substituted as party-opponent in the claim petition. The case set up by the claimant is that as a result of the accident she suffered miscarriage and permanent disability. She was admitted in the hospital for quite sometime and was also required to visit the hospital for long time for follow up treatment. In support of her claim she produced on record the FIR (Exhibit-14), medical papers of J.J.Hospital (marked as 'X' and Exhibit-13) diability certificate (Exhibit-X-1) and the letter of the R.T.O. (Exhibit-X-2). She also examined herself, Dr.Shridhar Kulkarni and Shivaji Ahire, clerk in the R.T.O. office, Nashik. As against this the respondent-insurance company (for short 'insurance company') has filed their written statement only. They did not examine any witness in support of their case. The only contention advanced on behalf of the insurance company in the written statement, before the tribunal as also before this Court, was that the vehicle in question was not insured with them and, therefore, the claimant is not entitle to make any claim from the insurance company.

4. The tribunal held that the claimant did meet with an accident and sustain injuries due to rash and/or negligent driving by the driver of the offending vehicle. The Tribunal, further held that the documentary evidence produced on record is not sufficient to prove the extent of the injuries/disablement suffered by her. The disability certificate (Exhibit-16) which shows that on account of old malunited fracture the claimant cannot walk properly, was discarded on the ground that it was issued after 10 years of the accident. In so far as the issue as to whether or not the vehicle was insured with the respondent-insurance company is concerned, it was answered in the affirmative.

5. We heard the learned counsel for the parties for quite sometime and with their assistance perused the evidence and the impugned award dated 10.2.1999 and other material placed before us in support of their contentions.

6. Mr.Kotak learned counsel for the appellant, at the outset, submitted that the entire evidence of the appellant and her witnesses has gone

unchallenged in so far as the injuries and disability sufferred by the appellant is concerned and, therefore, keeping that in view the tribunal ought not to have discarded her oral testimony in which she gave all the particulars of her sufferrings. On the other hand the only submission advanced by Mr.Singh, learned counsel for respondent no.2 was that the vehicle was not insured with the respondent-insurance company and, therefore, they are not liable to pay compensation to the claimant.

7. It appears that initially the claimant had filed a claim for sum of Rs.20,000/- only which she amended on 30th June, 1994 and enhanced her claim to Rs.1,50,000/-. In her deposition she has stated as to how the accident occurred and what injuries as also disability was sufferred in that accident. She has also stated that due to the impact of the accident there was miscarriage in J.J.Hospital. According to the claimant, she was an indoor patient in J.J.Hospital for three months. She has also stated as to what expenditure was incurred by her. The only question put in the cross examination by the insurance company was that whether she was able to state that the offending

vehicle had valid insurance on the date of the accident, which was replied by her in the negative. She was not cross examined by the insurance company on any other aspect. It is thus clear that her statement in examination in chief that she sustained permanent disability has remained unchallenged. As a matter of fact, her entire evidence has gone unchallenged in so far as the injuries/partial permanent disability sufferred by her is concerned. Similarly, the testimony of the doctor, who examined her after 10 years, has also gone unchallenged. The doctor has supported the case of disability on the basis of X-rays of lumber region. He gave clear opinion that she sufferred 30% partial permanent disability. His evidence was also not challenged by the insurance company. As a matter of fact the cross was declined by the advocate appearing for insurance company. It is now well settled that if the opponent decline to put the essential material setting out their case in the cross examination, it would have to be relied on an admission and that such an uncontroverted evidence must be acted upon by the Court. Keeping this position of law in view and the findings recorded by the tribunal holding that the claimant met with an accident and she sufferred

injuries in the said accident, we are at a loss to understand as to why the Tribunal has awarded a sum of Rs.3,000/- only. The Tribunal as also the learned Single Judge have completely overlooked the fact that the evidence of the claimant and the doctor has remained uncontroverted which, in our opinion, was sufficient to hold that the claimant sufferred partial permanent disability in the very accident. We did not find a valid reason to discard the evidence of the claimant and her witnesses. The documents produced by her coupled with oral evidence are undoubtedly sufficient to hold that she did suffer disability in the alleged accident. In the absence of cross examination of the witnesses the Tribunal erred in holding that there is no material to connect the disability in the alleged accident. If the uncontroverted facts are taken at their face value, in our opinion, they are sufficient to award more compensation then what has been awarded by the impugned judgment and award.

8. In so far as the issue as to whether or not the vehicle in question was insured with the respondent-insurance company is concerned, we perused the evidence of Shivaji Ahire, the clerk in

R.T.O. office, written statement filed by the respondent-insurance company as also by United Fire and General Insurance Company Ltd. The United India Assurance Co., which was earlier joined as party opponent, had filed written statement stating therein that the vehicle in question was insured with the respondent-New India Insurance Company vide their Certificate/Policy No.147569 for a period from 19.2.1981 to 18.2.1982 and, therefore, they (i.e. The United India Assurance Co.) were not liable to pay the claim. As against this, the insurance company, in their written statement, has simply denied the fact that the vehicle in question was insured with them and that there existed cause of action against them. In so far as the evidence of Shivaji Ahire is concerned, he has categorically stated that the vehicle was insured with the respondent-insurance company at the relevant time. He has further stated that this vehicle was insured with New India Assurance Co. for period from 1978 till June 1982. He has stated so on the basis of the register maintained by R.T.O. office in Nashik. He also produced the relevant documents in support of his deposition. The perusal of his evidence as also from the written statement filed by both the insurance companies, we find no reason

to interfere with the finding recorded by the tribunal that the offending vehicle was insured with respondent-insurance company. This Court had an occasion to consider similar facts in **Bhalchandra N.Donge and Anr. V. Mohan G.Butala and Ors. 1995 ACJ 898** wherein it was observed that there is no reason to disbelieve the record of the R.T.O. office and the report of the motor vehicles inspector. In the instant case, we see absolutely no reason to disbelieve the record of R.T.O., Nashik and the testimony of Shivaji Ahire. In the circumstances the case of the insurance company that the vehicle in question was not insured with them must be rejected.

9. That takes us to consider as to what extent the claimant is entitle for enhancement of the compensation. In view of the peculiar facts and circumstances of the case we are not inclined to consider her enhanced claim of Rs.1,50,000/-, which she enhanced after 12 years of the accident, by way of an amendment. She has not stated as to what prompted her to claim that amount in 1994. In 1982 when the claim petition was filed she had claimed only Rs.20,000/-. Considering the evidence of the claimant and Dr.Kulkarni, who has corroborated her

deposition in all respect, we have no hesitation in holding that the claimant did suffer partial permanent disability in the accident in question and, therefore, she is entitle for compensation of Rs.20,000/-. We have also taken into consideration the expenditure incurred for the treatment as also partial loss of her income. The insurance company is, accordingly, directed to pay to the claimant an amount of Rs.20,000/- with interest at the rate of 10% per annum from the date of the application till the realisation of the amount together with the costs to the extent of the claim. The letters patent appeal is allowed. The impugned award, accordingly, stands modified.

(D.B.Bhosale, J.) **(S.B.MHASE, J.)**

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